

## § 1.7476-2

## 26 CFR Ch. I (4-1-01 Edition)

to § 1.7476-2 nor later than the date on which such notice is given.

(2) *Controlled groups, etc.* An individual shall be considered to be an employee of an employer if such employee is treated as that employer's employee under section 414 (b) or (c).

(3) *Self-employed individuals.* A self-employed individual shall be considered an employee.

(4) *Years to which section 410 relates.* For purposes of paragraph (b)(7) of this section, section 410 shall be considered to apply to a plan year if an election has been made under section 1017(d) of the Employee Retirement Income Security Act of 1974 to have section 410 apply to such plan year, whether or not the election is conditioned upon the issuance by the Commissioner of a favorable determination letter.

(5) *Government, church plans, etc.* In the case of an organization described in section 410(c)(1), section 410 will be considered to apply to a plan year of such organization for any plan year to which section 410(c)(2) applies to such plan.

(d) *Definitions.* For the purposes of paragraph (b) of this section and § 1.7476-2:

(1) *Employer.* The term "employer" includes all employers who maintain the plan with respect to which an advance determination applies. A sole proprietor shall be considered such person's own employer and a partnership is considered to be the employer of each of the partners.

(2) *Eligible to participate.* For purposes of this section, an employee is eligible to participate in a plan if such employee:

- (i) Is a participant in the plan,
- (ii) Would be a participant in the plan if such employee met the minimum age and service requirements of the plan or
- (iii) Would be a participant in the plan upon making mandatory employee contributions.

In applying this paragraph (d)(2), plan provisions (with respect to which the determination regarding qualification is to be based) not in effect on the first date on which notice is given to interested parties shall be treated as though they were in effect on such date.

(3) *Place of employment.* A place of employment includes all worksites within a plant, installation, store, office, or similar facility. Any employee who has no principal place of employment shall be treated as though such employee's principal place of employment is that place to which such employee regularly reports to the employer.

[T.D. 7421, 41 FR 20876, May 21, 1976; 41 FR 22561, June 4, 1976, as amended by T.D. 8179, 53 FR 6613, Mar. 2, 1988]

### § 1.7476-2 Notice to interested parties.

(a) *In general.* Any person applying to a district director for a determination described in paragraph (b)(7) of § 1.7476-1 shall cause notice of the application to be given to persons who qualify as interested parties under § 1.7476-1 with respect to the application, whether or not such application is received by the Internal Revenue Service before the date on which section 410 applies to the plan.

(b) *Nature of notice.* The notice required by this section shall be given in writing, shall contain the information and be given within the time prescribed in paragraph (o)(3) of § 601.201 of this chapter (Statement of Procedural Rules), and shall be given in the manner prescribed in paragraph (c) of this section.

(c) *Method of giving notice—(1) Present employee.* In the case of a present employee who is an interested party, notice shall be given in person, by mailing, by posting, or by printing it in a publication of the employer or an employee organization which is distributed in such a manner so as to be reasonably available to such employee. Notice given by posting shall be made by posting such notice (i) at those locations within the principal places of employment of the interested parties which are customarily used for employer notices to employees with regard to labor-management relations matters, or (ii) if the plan is maintained pursuant to one or more collective-bargaining agreements, at those locations described in (i) or at those locations customarily used by the employee representatives for posting notices with regard to labor-management relations matters (such as local union meeting places) in the geographical

area or areas within which the interested parties are employed. Regardless of which method is used to notify an employee, if an interested party who is a present employee is in a unit of employees covered by a collective-bargaining agreement between employee representatives and one or more employers, notice shall also be given in person or by mail to the collective-bargaining representative of such interested party.

(2) *Former employee or beneficiary.* (i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, in the case of a former employee or beneficiary who is an interested party, notice shall be given in person or by mail to the last known address of such former employee or beneficiary.

(ii) In cases in which compliance with the methods for notification prescribed in paragraph (c)(2)(i) of this section will present unusual financial or administrative burdens or, by reason of the peculiar circumstances of the case, cannot reasonably be expected to result in adequate and timely notice, applicants for advance determination letters may cause notice to be given to former employees or beneficiaries by methods other than those described in such paragraph (c)(2)(i) provided such methods are reasonably calculated to provide timely notice to such employees or beneficiaries who are interested parties, or to established representatives of such interested parties who may be reasonably expected to act in their interest and on their behalf. In such a case, the application for determination shall be accompanied by a full description of the method of notification used, as well as the particular financial or administrative burdens that would have occurred if notice had been given pursuant to the methods prescribed in paragraph (c)(2)(i) of this section, or the reasons why such prescribed methods would not have resulted in adequate or timely notice.

(d) *Effective date.* (1) The provisions of § 1.7476-1 and this section shall apply to applications referred to in paragraph (b) of § 1.7476-1 made on or after June 21, 1976. Sections 11.7476-1, and 11.7476-2 of this chapter (Temporary Income Tax Regulations under the Employee Retirement Income Security Act of

1974) as promulgated by Treasury Decision 7358 (May 30, 1975) shall apply to applications made before such date. However, an applicant may elect to have the provisions of § 1.7476-1 and this section apply with respect to an application made after May 20, 1976 and before June 21, 1976. Such election may be made by attaching to the application as originally submitted, a statement that the applicant has elected to have the provisions of § 1.7476-1 and this section apply.

(2) Notwithstanding paragraph (d)(1) of this section, if:

(i) The plan or plan amendment which is the subject of an application for advance determination, is adopted on or before May 30, 1976, and,

(ii) Such application for advance determination is made before September 2, 1976, the applicant may elect to have the provisions of §§ 11.7476-1 and 11.7476-2 of this chapter (Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974) apply with respect to such application made on or after June 21, 1976 and before September 2, 1976. Such an election may be made by attaching to the application as originally submitted, a statement that the applicant has elected to have the provisions of §§ 11.7476-1 and 11.7476-2 of this chapter (Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974) apply.

[T.D. 7421, 41 FR 20876, May 21, 1976]

#### § 1.7476-3 Notice of determination.

(a) *In general.* Under section 7476(b)(5) if a district director sends to the employer, the plan administrator, an interested party with respect to the plan, or the Pension Benefit Guaranty Corporation (or in the case of certain individuals who qualify as interested parties under paragraph (b) of § 1.7476-1, to the person described under paragraph (c) of this section as the representative of such individuals) by certified or registered mail a notice of determination with respect to the qualification of a retirement plan described in section 7476(d), no proceeding for a declaratory judgment by the United States Tax Court with respect to the qualification of such plan may be initiated by such person unless the pleading initiating